

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Marshall T. Savage	Conf. No.	9952
Serial No.:	10/687,264	Group Art Unit:	3676
Filed:	Oct. 15, 2003	Examiner:	Bates, Zakiya W.
For:	Linearly Scalable Geothermic Fuel Cells	Attorney Docket:	RM607a

Mail Stop Amendment
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

REMARKS

Dear Examiner Bates:

In response to the Office Action mailed April 14, 2006, please find the attached terminal disclaimer submitted by Applicant. Pursuant to 37 CFR 1.321(c), an Applicant may file a terminal disclaimer in this application for the purpose of overcoming a judicially created double patenting rejection.

In paragraphs 1 and 2 of the Detailed Action, the Examiner states that claims 1-8, 12 and 14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Pat. No. 6,684,948. Pursuant to 37 CFR 1.321(c), Applicant timely files the terminal disclaimer attached hereto for the purpose of overcoming an obviousness-type double patenting rejection.

Pursuant to 37 C.F.R. 1.130(a), a timely filed terminal disclaimer in compliance with 37 C.F.R. 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground, provided that the conflicting application or patent is shown to be commonly owned with this application. Independent Energy Partners, Inc. owns both the conflicting patent U.S. Pat. No. 6,684,948 (recorded on 02/17/2004 at Reel/Frame 014981/0193) and the subject application S/N 10/687,264 (recorded on 10/15/2003 at Reel/Frame 014628/0268). Accordingly, the attached timely filed terminal disclaimer may be

used to overcome the Examiner's rejection which is based on nonstatutory double patenting grounds.

A terminal disclaimer filed to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed.Cir. 1991). There, the court indicated that the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection." Similarly, in the instant case the filing of the attached terminal disclaimer simply overcomes the Examiner's grounds for rejection; it raises neither a presumption nor estoppel on the merits of the rejection.

The Examiner's allowance of claims 9-11 and 15-45 in paragraph 3 of the Detailed Action is both noted and appreciated.

Applicant respectfully requests the Examiner to pass this application to allowance.

Respectfully Submitted,



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Date: 5-17-06